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8 Attorneys for Plaintiff

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 FACEBOOK, INC., a Delaware) No. C 09-00798 JF
Corporation,) [Filed February 24, 2009]
14 Plaintiff,)
15 v.)
16 SANFORD WALLACE,)
17 Defendant.)

18 UNITED STATES OF AMERICA,) No. CR 11-00456 EDJ
Plaintiff,) [Filed July 6, 2011]
19)
20 v.)
21 SANFORD WALLACE,)
22 Defendant.)

NOTICE OF RELATED CASE
IN A CRIMINAL ACTION
(San Jose Venue)

24 The United States of America, pursuant to Local Criminal Rule 8-1, hereby notifies the Court
25 that the two above-captioned criminal cases are related.

26 On February 24, 2009, Facebook filed a lawsuit in the United States District Court for the
27 Northern District of California against defendant Sanford Wallace (“Wallace”) and other
28 individuals for spamming activities, in violation of the CAN-SPAM Act of 2003, the Computer

1 Fraud and Abuse Act, and California's Anti-Phishing and Computer Data Access and Fraud
2 Acts. *See Attachment A, Complaint.*

3 On March 2, 2009, the Honorable Jeremy Fogel issued a temporary restraining order
4 ("TRO") against Wallace prohibiting him from accessing or attempting to access Facebook in
5 any manner whatsoever, including sending spam to Facebook users, accessing or attempting to
6 access Facebook's website, retaining any copies of Facebook's information, entering Facebook's
7 physical premises, creating or maintaining a Facebook account, and assisting others to violate
8 Facebook's Terms of Use. On the same day, Facebook served Wallace with Facebook's
9 complaint, motion for a TRO, a copy of the Judge Fogel's order granting the TRO, Facebook's
10 motion for a preliminary injunction, and a summons to appear on March 24, 2009. On March 24,
11 2009, Judge Fogel issued an Order Granting Preliminary Injunction against Wallace prohibiting
12 him from accessing any of Facebook's websites and from engaging in other activities relating to
13 their alleged spamming and phishing scheme. On June 12, 2009, based upon information from
14 Facebook that Wallace violated the TRO and preliminary injunction, Judge Fogel informed
15 Wallace in open court that he was referring the matter to the United States Attorney's Office for
16 a criminal contempt prosecution. On June 29, 2009, Judge Fogel formally referred the case to
17 the United States Attorney for investigation. Then, on September 18, 2009, Judge Fogel issued a
18 default judgement against Wallace for \$711 million dollars and issued a permanent injunction
19 against Wallace prohibiting him from, among other things, accessing or attempting to access any
20 of Facebook's websites, and creating or maintaining Facebook accounts. *See Attachment B,*
21 Civil Docket for *Facebook v. Wallace*, C-09-00798 JF.

22 On July 6, 2011, a federal grand jury indicted Wallace for his scheme to send unsolicited
23 messages to Facebook users, in violation of several sections of 18 U.S.C. § 1037, fraud and
24 related activity in connection with electronic mail, and 18 U.S.C. § 1030(a)(5), intentional
25 damage to a protected computer. Wallace was also charged with two counts of criminal
26 contempt, in violation of 18 U.S.C. § 401(3), for failing to obey Judge Fogel's order prohibiting
27 him from accessing Facebook's website and maintaining a Facebook account. *See Attachment*
28 C, Indictment.

1 Local Rule 8.1(a) provides that:

2 Whenever a party to a criminal action pending in this District knows or learns
3 that the action is related to a civil or criminal action, which is or was pending in this
4 District, that party shall promptly file a "Notice of Related Case in a Criminal Action"
5 with the Judge assigned to the earliest filed action, shall lodge a copy of the notice with
6 the chambers of each Judge assigned to each case and shall serve all known parties with a
7 copy of the notice.

8 In addition, Local Rule 8.1(b) states that cases are related when "both actions concern one or
9 more of the same defendants and the same alleged events, occurrences, transactions, or
10 property;" or "appear likely to entail substantial duplication of labor if heard by different Judges
11 or might create conflicts and unnecessary expenses if conducted before different Judges." Local
12 Rule 8.1(b)(1)-(2).

13 The civil and criminal case against Wallace are related within the meaning of Local Rule 8-
14 1(b)(1) as they involve the same defendant and the same alleged series of events. Furthermore,
15 the civil and criminal cases are related within the meaning of Local Rule 8-1(b)(2) because, if
16 heard by separate judges, they likely would involve substantial duplication of labor by the two
17 judges, create conflicts, as well as unnecessary expenses.

18 Therefore, pursuant to the requirement of Local Criminal Rule 8-1(c)(4), government counsel
19 states that assignment of these cases to a single judge is likely to conserve judicial resources and
20 promote an efficient determination of each action.

21 DATE: 8/4/11

Respectfully Submitted,

22 MELINDA HAAG
23 United States Attorney

24 /s/
25 SUSAN KNIGHT
26 Assistant United States Attorney
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